Supreme Court of the United States

OCTOBER TERM, 1966

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No. 898

W. H. YATES, and JOHN W. GARY,
Petitioners,

versus

HERBERT H. HODGES, and FRANCES A. HODGES,
Respondents.

PETITIONERS REPLY TO RESPONDENTS BRIEF.

BARNETT, MONTGOMERY, McCLINTOCK & CUNNINGHAM,
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PETITIONERS REPLY TO RESPONDENTS BRIEF.

ADMISSIONS BY RESPONDENTS.

In their brief, Respondents admit the following:— (1) By offering no argument to the contrary, they admit that under Mississippi jurisprudence, the judgment rendered by the Supreme Court of Mississippi is a final judgment; (2) They admit that the Complainants Bill of Complaint charged only one single duty on the part of Petitioners and that duty was to install a pressure relief valve (the type installed) on the hot water side of the heater and that Petitioner Defendants violated that duty by installing this pres-

sure relief valve on the cold water side of the heater and that such was the proximate cause of the explosion; (3) They admit that the Bill of Complaint did not charge that it was the duty of Petitioners to install a different type valve, known in the trade as a combination pressure relief and temperature valve on the hot water side and the bill did not charge that the failure to do so was the proximate cause of the explosion; (4) They admit that the Supreme Court of Mississippi rendered a final judgment against Petitioners solely on the ground that they were negligent in failing to install the combination pressure relief and temperature relief valve on the hot water side of the heater, even though such negligence was not charged in the Bill of Complaint, no issue was tendered thereon in the bill, Petitioners were denied their day in Court to defend against such uncharged cause of action and any evidence they might offer to disprove the charge would be incompetent, because not relevant to any issue framed by the pleadings between the Complainant Respondents and the Defendant Petitioners, and all this without the consent of Petitioners, and in direct conflict with this Court's holding in *Coe vs. Armour Fertilizer Works, 237 U. S. 413; Reynolds vs. Stockton, 140 U. S. 254; Putnam vs. Day, 89 U. S., (22 Wall) 60, 66,* and *Saunders vs. Shaw, 244 U. S. 371;* and (5) They admit, by not arguing to the contrary, that such conduct on the part of the Supreme Court of Mississippi is in conflict with the Fourteenth Amendment of the Federal Constitution and constitutes a denial of due process as held in *Saunders vs. Shaw, (La. 1917) 244 U. S. 371, 37 S. Ct.*

638, 61 L. Ed. 1163, and (6) Admits by not arguing to the contrary that the federal question of due process was timely raised.

ANSWERING RESPONDENTS POINT ONE.

Respondents argue (Page 2 of Brief) that although Respondents did not sue on a cause of action against Petitioners, based upon the violation by Petitioners of a duty to install a combination pressure and temperature relief valve on the hot water side of the heater, yet the Supreme Court of Mississippi, was within its power and jurisdiction to render a judgment on this unpleaded cause of action, because proof had been offered by Petitioners co-defendant, State Stove Manufacturing Company, in support of an affirmative defense in its answer, over the continuing objection by Petitioners that the evidence was not competent as against Petitioners because it was not relevant to any issue raised by the Respondents Bill of Complaint and the Answer of these Petitioners.

This argument of Respondents is so contrary to Mississippi jurisprudence as to be laughable and bears no resemblance to any rule of law recognized in this State.

The Supreme Court of Mississippi, has clearly established the law of this State to be that it is the pleadings between the Complainant and each separate Defendant that establish the issues between them respectively, and that the Courts are obliged to

follow and to hold the proof offered between these parties to the specific issues raised between them by their pleadings. *Mississippi Power & Light Co. vs. Petts, 179 So. 364, 365.* In *Wilson vs. Terry, 67 So. 2d 387,* the Supreme Court of Mississippi, held that a Defendant is required to take notice and defend only against the allegations against him, if any, in the original or amended bill or declaration. In *Rutland et al. vs. McIntosh, 83 So. 635,* the Supreme Court of Mississippi held that relief cannot be granted to a Complainant under a prayer for general relief unless such relief is supported by a specific allegation of fact alleged in the bill entitling him to that relief.

It is the fundamental law of Mississippi, that the relief to be decreed must conform to and come within both the pleadings and the proof, including as proof those things which are judicially admitted *(R. R. Co. vs. Carter, 107 Miss. 1, 64 So. 842)* and no valid decree can go outside of the boundary prescribed by the pleadings and proof. *Nixon vs. Biloxi, 76 Miss. 812, 25 So. 654; Barker vs. Jackson, 90 Miss. 628, 44 So. 34; Hart vs. Chemical Bank (Miss.) 27 So. 926; Phelps vs. Commodore (Miss.) 1 So. 834; Blythe vs. Simmons, 107 Miss. 510, 65 So. 571; Baygents vs. Beard, 41 Miss. 534; Cox vs. Kyle, 75 Miss. 669, 23 So. 518.* It is also fundamental that relief cannot be awarded on an issue not submitted by the bill itself. *Blythe vs. Simmons, 107 Miss. 510, 65 So. 571; Tierney vs. Klein, 67 Miss. 179, 6 So. 739, 8 So. 424,* and *Parks vs. Kline, 118 Miss. 125, 79 So. 81.* No defects in the Bill of Complaint can be supplied by any adversary's

pleading. (See opinion of *McLean J.*, in *Jackson vs. Ashton, 11 Pet. (U. S.) 229; Story Eq. Pl. Sec. 257.*

The holdings of the Supreme Court of the United States are in accord with the above cited Mississippi cases. *Reynolds vs. Stockton, 140 U. S., P. 266.*

In *Putman vs. Day, 89 U. S. (22 Wall) 60, 66,* this Court held that a decree is void unless it is founded on the allegata as well as the probata of the case.

In *United States vs. Goldstein, et al., 271 Fed. 838 (10th Cir.)* it was held that a judgment upon a matter not within the pleadings is void, being contrary to fundamental principles of justice.

In *Saunders vs. Shaw, (1917) 244 U. S. 371;* this Court held that where, as here in the case at bar, a case has been decided by a State Supreme Court in such a way that a party has not had a proper day in Court to present his defense, he has been denied the due process guaranteed him by the Fourteenth Amendment. But despite these decisions by this Court to the contrary, the Respondents in their concluding paragraph to their Point One are so bold as to deny that the judgment sought herein to be reviewed denies due process regardless of the uniform holdings of the State and Federal cases holding directly to the contrary.

In Mississippi the right of recovery is limited to the negligence charged in the declaration. *Eagle Cotton Oil Co. vs. Pickett, 175 Miss. 577, 166 So. 764.*

In *N. O. & N. E. R. Co. vs. Mikes, 197 Miss. 846, 20 So. 2d 657,* it was held that when negligence is the cause of action the verdict must be confined to the ground or grounds of negligence alleged as the cause of action.

In *Hines vs. McCullers, 212 Miss. 666, 676, 83 So. 734,* the Court declared this rule to be elementary.

In *Dowd vs. Morgan, 23 Miss. 587,* it was held that Courts of justice cannot grant relief or give judgments except upon the ground such relief is sought.

We respectfully submit that according to its previous decisions above cited the Supreme Court of Mississippi exceeded its jurisdiction and awarded a void judgment against Petitioners upon an assumed cause of action, that was not sued on in the Bill of Complaint, and of which Petitioners were not informed, were not summoned to defend, did not litigate and that said decree is void. It falls within the condemnation of the above cited decisions of this Court and the Mississippi decisions.

POINT TWO.

Under this Point Respondents argue that under Rule 15 of the Federal Rules of Civil Procedure the decision must be against Petitioners.

This argument has no foundation in law and is wholly unsupported by the record, because:

1. Rule 15 has no application to a trial in a State Court but applies only to procedure in Federal Courts.

2. This suit was tried in a State Court and comes here on petition for certiorari to the Supreme Court of Mississippi.

But even if Rule 15 did apply this case would not come within it because:—

1. When testimony was offered by State Stove Manufacturing Company in support of its affirmative defense, the Petitioners did object to the competency of same as against Petitioners, Yates and Gary, on the ground that it was not charged in the Bill of Complaint, that there was no issue thereon between Complainants and Petitioners, Yates and Gary, and no testimony is competent unless relevant to an issue in the case. (R360-363) In such cases Rule 15 would not apply even if the trial had been in a Federal Court.

In addition when the objection was made the Complainants made no motion to amend and after the testimony was all in the Complainants still made no motion to amend to conform to the proof.

Respondents say (Page 3 of Brief) that it was impossible for Respondents to allege it in their Bill of Complaint for the reason that this information was solely known to Petitioners and their Agent. The facts are, however, that it was affirmatively charged as a defense in State Stove Manufacturing Company's an-

swer that was filed in the cause long prior to the trial and the facts of such defense were well known to Respondents. Complainants should have amended their Bill of Complaint when this information was disclosed in the State Stove Company's answer, but they chose not to do so and by choice retained as the sole cause of action the charge that Petitioners were negligent only because they installed the value on the cold water side of the heater instead of on the hot water side. They knowingly chose the cause of action sued on and are bound to their pleading and their relief was limited to that disproved cause of action.

THE FEDERAL QUESTION WAS TIMELY RAISED.

Where, as here, a State Court has rendered a judgment upon a cause of action not sued on and this was the first time the question was raised and the Petitioners promptly filed a Suggestion of Error containing the ground that Petitioners had been deprived of due process of law, contrary to the 14th Amendment, the Federal question is substantial and was timely raised. *Saunders vs. Shaw, 244 U. S. 317.*

According to our understanding, it is the function of this Court to resolve conflicts of opinion on federal questions that have arisen between the highest court of a state and the decisions of this Court. Such being the case, the Supreme Court of the United States, to remain effective, must continue to grant certiorari in all cases such as here, where the opinion of the Supreme Court of Mississippi holds that its judgment is

not a denial of due process of law, in violation of the 14th Amendment. For it to render a judgment on cause of action not sued on, while the decisions of this Court are to the contrary and hold that such is a denial of due process in violation of the Fourteenth Amendment created a conflict between the decision of the Supreme Court of Mississippi and the decisions of this Court on a question involving the construction of the due process clause of the Federal Constitution, that must be resolved and corrected by this Court.

IMPORTANCE OF THIS PETITION.

By this petition we are representing not only the Petitioners, our clients, but we are also representing the tremendously important principles, upon which are based the plans, hopes, and aspirations of all people throughout this entire Nation.

These Petitioners, though only a small contracting firm in a small town, and being only two persons among the vast total population of this Nation, still the same guaranty of due process of law here involved in their behalf applies to them that same protection guaranteed to and shared equally with every other two persons in the Nation. To deny this protection to Petitioners would be a denial to all. A denial to all would constitute a repeal of the due process clause of the Fourteenth Amendment.

The property rights of these two people are not essential to the economic welfare of the Nation, but the

Constitutional rights of two people are the Constitutional rights of every living citizen of this Nation. With such vast and comprehensive rights involved in this case, we are sure that this Court will determine that this Court will never yield to any request to deny the Constitutional rights of due process to all or even to one of the people of this Nation. Such, we deem to the importance of this case.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

BARNETT, MONTGOMERY,
McCLINTOCK & CUNNINGHAM,

Malcolm B. Montgomery

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Jackson, Mississippi.

CERTIFICATE OF SERVICE.

I, Malcolm B. Montgomery, Attorney for Petitioners herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the date shown below, I served the foregoing Petitioners Reply to Respondents Brief on Herbert H. Hodges and Frances A. Hodges, his wife, Respondents, by mailing a true copy thereof to Honorable W. H. Jolly, P. O. Box 743, Columbus, Mississippi, and to Honorable DeWitt T. Hicks, Jr., Threadgill and Hicks, P. O. Box 1094, Columbus, Mississippi, air mail, postage prepaid, by first class mail, Attorneys of record for said Respondents.

Dated this, the 25 day of January, 1967.

Malcolm B. Montgomery

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MALCOLM B. MONTGOMERY.